

**PLANNING DEPARTMENT - BOARD OF ADJUSTMENT**

**ACTION SHEET**

**TO:** John P. Bohenko, City Manager

**FROM:** Mary Koepenick, Planning Department

**RE:** Actions Taken by the Portsmouth **Board of Adjustment at its July 19, 2016 Meeting** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

**PRESENT:** Chairman David Rheaume, Vice-Chairman Charles LeMay, Jeremiah Johnson, Patrick Moretti, Christopher Mulligan, Arthur Parrott.  
Alternates: Jim Lee, Peter McDonell

**EXCUSED:** None

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**I. APPROVAL OF MINUTES**

A) June 21, 2016

The Board approved the Minutes as presented.

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B) June 28, 2016

The Board approved the Minutes with minor corrections.

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**II. OLD BUSINESS**

A) 5 Buckminster Way

The Board referred the letter sent to them concerning the above property to the Planning Department to refer to the Legal Department to take any action they deem appropriate.

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### III. OLD BUSINESS - PUBLIC HEARINGS

A) Case #4-9

Petitioner: Michael De La Cruz

Property: 75 Congress Street (63 Congress Street)

Assessor Plan 117, Lot 5

Zoning District: Character District 5, Downtown Overlay District

Description: Construct five residential use dormers and one office use dormer, with walkways and decks. Restore pediments.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered without conforming to the Ordinance.
2. A Variance from Section 10.5A43.31 and Section 10.5A21.22 to allow the following building heights where the maximum building heights allowed per Map 10.5A21B are 40' for a 2-3 stories height requirement area and 45' for a 2-3 stories (short 4<sup>th</sup>) height requirement area:
  - a. 62' 11" ± for the proposed pediments;
  - b. 65' 11" ± for the proposed flat roofed office dormer onto existing sloped roof; and
  - c. 58' 11" ± for the proposed residential dormers(This petition was postponed from the May 17 and June 21, 2016 meetings and has been revised as indicated in italics.)

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. The essentially commercial character of the neighborhood will not change in any significant way nor will the changes pose a threat to the health, safety or welfare of the public.
- Substantial justice will be done as the loss to the applicant if the variances were denied would result in the existing building remaining without some of its

historical features while the denial would not result in any gain to the general public.

- The value of surrounding properties, many of which are of similar or greater height, will not be diminished as light and air will not be affected and an effort has been made to incorporate the changes without affecting the historic character of the building. The proposed 65’ height will be less obvious to observers as it is for a portion of the building that is substantially back from wall surfaces.
- Literal enforcement of the ordinance will result in unnecessary hardship due to special conditions of the property which include a large building spanning the lot, the lot’s corner location, and the need for dormers to introduce light and air into new spaces as the historic building is repurposed. Modifying a pre-existing nonconforming building and restoring original historic features requires relief so that there is no fair and substantial relationship between the purpose of the recently enacted height restrictions and their specific application to this property.

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B) Case #6-12

Petitioner: Beth P. Griffin Revocable Trust of 2011, Beth P. Griffin, Trustee

Property: 250 Broad Street

Assessor Plan Map 131, Lot 10

Zoning District: General Residence A

Description: Second floor addition and relocation of barn/office/rec. room.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a right side yard setback of 3.09’± for the barn/office and 4.05’± for the second story addition where 10’ is required.

Action:

The Board accepted the **withdrawal** of the petition by the applicant.

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**IV. PUBLIC HEARINGS – NEW BUSINESS**

1) Case #7-1

Petitioners: Sarah J. Duddy & Gregory J. Vaillancourt

Property: 43 Suzanne Drive

Assessor Plan 292, Lot 70

Zoning District: Single Residence B

Description: Raising chickens.

- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use #17.20 to allow the keeping of chickens where the use is allowed by Special Exception.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulations:

Stipulations:

- There will be no more than six chickens at any one time, with no roosters allowed.

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided by the Ordinance for the particular use permitted by Special Exception are met.
- The use will present no hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- With the stipulated restriction on the number of chickens, there will be no detriment to property values or change in the essential characteristics of the area from pollutants, noise, glare, odors or other irritants.
- Nothing in the use will create a safety hazard, increase in traffic congestion or excessive demand on municipal services.
- With a modest structure to house the chickens, there will be no increase in storm water runoff onto adjacent property or streets.

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2) Case #7-2

Petitioners: Green Leaves Holdings LLC, owner, Portsmouth Believers Church, Inc., applicants

Property: 4 Greenleaf Woods Drive #101

Assessor Plan 243, Lot 6-A101

Zoning District: Gateway

Description: Religious services in a building with office uses.

- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use 3.11 to allow a religious place of assembly where the use is allowed by Special Exception.

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided by the Ordinance for the particular use permitted by Special Exception are met.
- There is nothing in the nature of the use that would result in a hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- As presented, there will be no detriment to property values in the vicinity or change in the essential characteristics of the area from the scale of buildings, odors, pollutants, noise, glare, or other irritants.
- With the traffic generated mainly at hours different from those of surrounding uses, there will be no creation of a traffic safety hazard or increase in traffic congestion.
- The use will not create an excessive demand on municipal services and, with no changes to the structure, there will be no significant increase of storm water runoff onto adjacent property or streets.

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3) Case #7-3

Petitioner: Sachiko Akiyama

Property: 161 Aldrich Road

Assessor Plan 153, Lot 32

Zoning District: Single Residence B

Description: Add second story to existing garage.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 71" ± left side yard setback where 10' is required.
3. A Variance from Section 10.521 to allow a 14'± rear yard setback where 30' is required.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulation:

Stipulations:

- The addition will not be used now as, or converted in the future to, a dwelling unit.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the essential character of the neighborhood will not be altered by adding, with the protective stipulation, a second story to the existing garage.
- Substantial justice will be done by allowing the property owner the benefit of enlarging and upgrading the garage in the same location with no corresponding harm to the general public.
- An upward expansion of a garage located at the back of the lot with the adjacent side yard open and clear will not diminish the value of surrounding properties.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to special conditions of the property. The existing garage does not meet current setback requirements so that any reasonable expansion would require relief.

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4) Case #7-4

Petitioners: Thunderbolt Realty Trust of 2011 c/o Alison Jewett

Property: 17 Gardner Street

Assessor Plan 103, Lot 14

Zoning District: General Residence B

Description: Reconstruct rear additions.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A front yard setback of 4’10” ± where 5’ is required;
  - b) A left side yard setback of 1” ± where 10’ is required;
  - c) A rear yard setback of 9’2” ± where 25’ is required; and
  - d) Building coverage of 40.2%± where 30% is the maximum allowed.

Action:

The Board voted to **postpone** the petition to an August meeting, as requested by the attorney for the applicant.

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- 5) Case #7-5  
Petitioners: Carol I. Cooper, owner, Lorax Sustainable Development, LLC, applicant  
Property: 996 Maplewood Avenue  
Assessor Plan 219, Lot 4  
Zoning District: Single Residence B  
Description: Construct five free-standing dwellings.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.513 to allow more than one free-standing dwelling on a lot.

Action:

The Board voted to **deny** the petition as presented and advertised.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant the variance were not met.
  - The proposal would result in a significant increase in density in the immediate neighborhood altering its essential character so that granting the variance would be contrary to the public interest and the spirit of the Ordinance.
  - The unusual configuration of the lot results in an effectively lower setback requirement which would bring several of the proposed units closer than usual to the existing homes on abutting properties so that the value of surrounding properties would be diminished.
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- 6) Case #7-6  
Petitioner: 303 Islington Street LLC  
Property: 303 Islington Street  
Assessor Plan 144, Lot 11  
Zoning District: General Residence C, (pending CD4-L2)  
Description: Maintain existing parking in rezoned district.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following.

1. A Variance from Section 10.5A44.31 to allow an off-street parking area to be located less than 20’ behind the façade of a principal building.
2. A Variance from Sections 10.5A43.50 and 10.5A44.32 to allow parking lots and loading areas without being screened from the street by a building or streetscreen.

Action:

The Board voted to **grant** the petition as presented and advertised noting that the requested relief is based on the need for compliance with the requirements in recently enacted changes to the Zoning Ordinance.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- The proposed project has not physically changed from that receiving previous variances from the Board so that the essential character of the neighborhood will not be altered and granting the new variances will not be contrary to the public interest or the spirit of the Ordinance.
- Substantial justice will be done as denying the variances will cause harm to the applicant with no corresponding benefit to the general public.
- With no physical change to the project, there will be no diminution in the value of surrounding properties.
- The special condition of the property creating a hardship is that the previously approved renovations to the property were occurring while changes to the Zoning Ordinance were being made that required applicant to seek this relief.

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7) Case #7-7

Petitioners: 1987 Tamposi Limited Partnership, owner, Key Collision Center of Portsmouth, LLC, applicant.

Property: 9 Post Road

Assessor Plan 284, Lot 11

Zoning District: Industrial

Description: Auto body repair facility with existing parking areas.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use #11.20 to allow a motor vehicle repair use in a district where the use is allowed by



Special Exception.

2. A Special Exception under Section 10.440, Use #20.61 to allow outdoor storage of vehicles in a district where the use is allowed by Special Exception.
3. A Variance from Section 10.843.21 to allow outdoor storage or display areas for vehicles to be set back less than 50' from the street right-of-way and from all lot lines.
4. A Variance from Section 10.1114.21 to allow parking spaces and accessways that do not meet the dimensional requirements for off-street parking.
5. A Variance from Section 1114.32(a) to allow vehicles to enter and leave parking spaces by passing over any other parking space or requiring the moving of any other vehicle.
6. A Variance from Section 10.1114.41 to allow no provision of a 5' wide pedestrian path throughout the site connecting adjacent streets, accessways, sidewalks and parking areas to the entrances to all structures.
7. A Variance from Section 10.1124.10 to allow loading areas to be located between the front property line and any building or structure or in a required side or rear yard.

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None.

Review Criteria:

The Special Exceptions were granted for the following reasons:

- The standards as provided by this Ordinance for the requested uses permitted by Special Exception are met.
- There will be no hazard to the public or adjacent property from potential fire explosion or release of toxic materials. The Technical Advisory Committee has reviewed the proposal and is satisfied that vehicles that have any risk will be drained before moving on site.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area as a result of buildings, structures or parking areas which are all pre-existing. There will be no odors, smoke, dust or other pollutants, noise, heat, other irritants, or unsightly outdoor storage resulting from the proposed use. Any outdoor storage of vehicles related to this use will not be the unsightly storage referenced in the standards and will not result in a detriment to property values or change the area's essential characteristics.

- There will be no creation of a traffic safety hazard or increase in the level of traffic congestion. This is a fully developed environment that is simply being adapted to a new use.
- There will be no effect from the proposed uses on the level of municipal services.
- With the proposed addition of the proposed bio-retention ponds, storm water runoff will be mitigated.

The variances were granted for the following reasons:

- Repurposing the existing parking, accessways and the main structure on the property to accommodate this new use without changing the built environment will not be contrary to the public interest and the spirit of the Ordinance. The essential character of the neighborhood will not be altered nor will the health, safety or welfare of the general public be threatened.
- Granting the variances will result in substantial justice as there would be a loss to the applicant if the property, as currently developed, were required to comply with all the requirements while there would be no corresponding benefit to the general public.
- There will be no essential change to the layout and, with the mitigating effect of the bio-retention areas, the value of surrounding properties will not be diminished.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property which include the existing built environment with a large building occupying much of the lot, a parking lot that will need to be re-adapted to a new use but will retain its basic character. With the special conditions, there is no fair and substantial relationship between the purposes of the Ordinance requirements from which the applicant needs relief and their specific application to this property. The proposed uses on the property are permitted by Special Exception and the proposal meets those standards so that the proposal is a reasonable one.

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- 8) Case #7-8  
Petitioners: Airgead Realty Trust, Paul & Christopher D. McInnis, Trustees, owners, Sligo Realty Trust, applicant  
Property: 678 (678-686) Maplewood Avenue  
Assessor Plan 220, Lot 89  
Zoning District: Single Residence B  
Description: Construct warehouse with associated retail and office space on two lots proposed to be merged.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance under Section 10.440 to allow warehouse, office and retail uses in a district where these uses are not allowed

Action:

The Board voted to **deny** the petition as presented and advertised.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant the variance are not met.
- The zoning of the property as Single Residence B has previously been continued and reinforced by City Council and Planning Board so that allowing this commercial use would not observe the spirit of the Ordinance.
- Substantial justice would not be done as the benefit to the applicant by granting the variance would not outweigh the detriment to the public by allowing a commercial use in a Single Residence B District.
- A reasonable use of the property can be made in strict conformance with the Ordinance.

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**V. OTHER BUSINESS**

No other business was presented.

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**VI. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 12:35 a.m.

Respectfully submitted,

Mary E. Koepenick, Secretary